


SO ORDERED.

SIGNED this 5th day of June, 2012.




Janice Miller Karlin
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

**In re:
Bobbie Ann Dennis,**

**Case No. 12-40301
Chapter 7**

Debtor.

**Order Placing the Trustee's Objection to Exemption Under Advisement
and Setting Case Management Deadlines**

This matter is before the Court on Trustee Robert L. Baer's objection to exemption of the earned income tax credit ("EIC"), exempted pursuant to K.S.A. § 60-2315, by Debtor Bobbie Ann Dennis.¹ The Trustee argues that his avoidance powers under 11 U.S.C. § 544(a)(2) defeat the Debtor's exemption.

Because the exemption claimed is of a future tax refund that may not be realized, the Trustee's objection is not yet ripe. Therefore, the Trustee's objection will be held under advisement and reassessed based on the deadlines imposed below.

¹ The exemption, which went into effect in April 2011, will be codified at K.S.A. § 60-2315. It can also be found via the following citation: S. 12, 2011 Reg. Sess. (Kan. 2011).

I. Factual and Procedural History

The Debtor filed a Chapter 7 bankruptcy petition on March 9, 2012. The Debtor's Schedule C claimed as exempt her "2012 EIC (est \$1,800)," pursuant to the Kansas exemption statutes. The Trustee objected to the exemption of the EIC,² and the Debtor has responded.³

II. Analysis and Deadlines

Kansas is an "opt-out" state, meaning that it has opted out of using the federal Bankruptcy Code exemptions in favor of state-law exemptions.⁴ The exemptions in Kansas permit a debtor to "exempt the debtor's right to receive tax credits allowed pursuant to" the federal and state EIC. The Trustee has timely objected to the Debtor's exemption.⁵ Because, however, the debtor has exempted her 2012 EIC refund, a refund that is neither certain in amount or certain to occur, the objection to exemption is not ripe for this Court's substantive analysis.⁶

² Doc. 27.

³ Doc. 29.

⁴ 11 U.S. C. § 522(b)(2); K.S.A. § 60-2312 (prohibiting, with exception, individual debtors from electing federal exemptions).

⁵ See Fed. R. Bankr. P. 4003(b)(1) (requiring objections to claims of exemptions be filed "within 30 days after the meeting of creditors held under § 341(a) is concluded"). In this matter, the meeting of creditors was held April 18, 2012, and the Trustee's objection to exemption was filed May 14, 2012, within the time required by Rule 4003(b)(1).

⁶ See *Tarrant Reg'l Water Dist. v. Herrmann*, 656 F.3d 1222, 1250 (10th Cir. 2011) ("In evaluating ripeness the central focus is on whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all."); *Salt Lake Tribune Publ'n Co. v. Mgmt. Planning, Inc.*, 454 F.3d 1128, 1140 (10th Cir. 2006) ("Determining whether the issues presented by this case are ripe for review requires us to evaluate both the fitness of the issues for judicial decision and the hardship to the

As a result, the Court places the Trustee's objection to exemption under advisement. The following case management deadlines are instituted, so that the Court can rule on the Trustee's objection to exemption as expeditiously as possible:

The Debtor's 2012 federal and state tax returns shall be filed by Monday, April 15, 2013. A full and complete copy of those returns shall be served on the Trustee by April 22, 2012.

If the Debtor receives either a federal or Kansas refund stemming in whole or in part from the EIC, the Debtor shall file a Notice with the Court, within ten days of receipt of the refund, informing it and the Trustee of the refund. That Notice shall include the following information: (1) the total federal refund received and the total federal EIC; (2) the total state refund received and the total state EIC; (3) the date the federal and state refunds were received; (4) the location of those refunds; and (5) whether any additional briefing is desired, based on any changed circumstances since the filing of the original objection and response filed in this case. Immediately upon receipt of the 2012 tax refund stemming in whole or in part from the EIC, the bankruptcy estate's share of the refund, as calculated by the Trustee,⁷ shall be

parties of withholding court consideration. We have described the fitness inquiry as whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all. We have described the hardship inquiry as whether the challenged action creates a direct and immediate dilemma for the parties." (internal quotations and citations omitted)).

⁷ See *Barowsky v. Serelson (In re Barowsky)*, 946 F.2d 1516, 1519 (10th Cir. 1991) (concluding that the portion of the Chapter 7 debtor's income tax refund that was "attributable to the pre-petition portion of the taxable year" was property of the bankruptcy estate).

deposited in Debtor's attorney's trust account, pending the entry of a final order on the Trustee's objection to the EIC exemption.

If, based upon the filed returns or for any other reason, the Debtor does not receive a federal or Kansas refund stemming in whole or in part from the EIC, the Debtor shall amend her Schedule C. Amendment of the Schedule C shall be made within 10 days of the Debtor learning that she is not entitled to a refund subject to the exemption. In that event, the Trustee shall then withdraw his objection to exemption within 10 days of the amendment to Schedule C.

III. Conclusion

The Trustee's objection to exemption⁸ is held under advisement. The parties shall comply with the Court's case management deadlines, set out above.

###

⁸ Doc. 27.